

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ePLUS, INC. : Civil Action No.
vs. : 3:09CV620
LAWSON SOFTWARE, INC. : December 30, 2010

COMPLETE TRANSCRIPT OF THE TELEPHONE CONFERENCE
BEFORE THE HONORABLE ROBERT E. PAYNE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

Scott L. Robertson, Esquire
Michael G. Strapp, Esquire
Jennifer A. Albert, Esquire
David M. Young, Esquire
Goodwin Procter, LLP
901 New York Avenue NW
Suite 900
Washington, D.C. 20001

Craig T. Merritt, Esquire
Christian & Barton, LLP
909 East Main Street
Suite 1200
Richmond, Virginia 23219-3095
Counsel for the plaintiff

Peppy Peterson, RPR
Official Court Reporter
United States District Court

1 supplemental instruction that Dr. Shamos actually specifically
2 disclaimed by saying that the claim charts contain matters
3 Lawson's interrogatories that are distinct from my opinions,
4 not I express my own opinions in the columns containing
5 headings beginning Shamos opinion.

6 There's no question that Dr. Shamos is making these
7 opinions. I'm not going to belabor the point, Your Honor, but
8 if you go through every single example that's in Exhibit G,
9 every instance Dr. Shamos made an anticipation opinion and an
10 anticipation opinion only.

11 THE COURT: Well, wait a minute. It's obvious from
12 that exhibit that he made an anticipation opinion, but he also
13 says in a couple of places to the extent that they are not
14 anticipated, they would have been obvious in these answers in
15 102 or 104.

16 Is it your argument that he doesn't give any details
17 about obviousness, that what he does is just give a conclusory
18 opinion about obviousness and that's insufficient under the
19 case law?

20 MR. ROBERTSON: That's exactly right, Your Honor.

21 THE COURT: Why isn't that right, Ms. Stoll-DeBell?
22 You are trying to -- as I understand your argument, you want me
23 to look at Exhibit G. Exhibit G, he doesn't give any
24 obviousness opinions under the category of Shamos opinion. He
25 gives anticipation opinions, and then you want me to go look at

1 the photographs 102, 104, and I think 231 or something, and
2 because he says to the extent they are not anticipated, they
3 are obvious, conclude that he's given an obvious opinion but he
4 hasn't given the detailed obviousness. He hasn't gone through
5 the obviousness drill in his opinions it doesn't look to me
6 like.

7 That's what you're asking me to do, isn't it, is to
8 say because he just sort of conclusorily adopts -- says, well,
9 if they're not anticipated they are obvious, then that's --
10 you're saying that's sufficient; isn't that right?

11 MS. STOLL-DeBELL: No, that's not. He gives detailed
12 opinions. He says, Exhibit 3 is anticipation and it's
13 obviousness, and he says at paragraph 230, it's obvious when
14 combined that you can see where each of those references
15 discloses each claim element in Exhibit 3.

16 THE COURT: Where is Exhibit 3?

17 MS. STOLL-DeBELL: Exhibit 3 is Exhibit G.

18 THE COURT: Oh, okay.

19 MS. STOLL-DeBELL: Your Honor --

20 THE COURT: Wait a minute. You have to understand
21 something. You all are so into this case that you use
22 shorthand. To me, Exhibit G contains nothing but anticipation
23 opinions. Now, show me in Exhibit G where he says anything
24 about obviousness under the heading Shamos opinion re J-CON.
25 Take me to a page that says that.

1 anticipation. He doesn't say -- he doesn't say anything about
2 the combination being obvious except his --

3 MS. STOLL-DeBELL: He does in his report. He says it
4 in his report at paragraph 230. Does he need to say it four
5 times instead of three times? You know, the fact of the matter
6 is ePlus --

7 THE COURT: The fact of the matter is that this guy's
8 report is babble and gobbledygook, and you all are going to get
9 crucified at trial with it because you can't follow anything
10 he's said or done, and that's exactly the problem I have with
11 this guy.

12 He's cute. He's real cute here. He gives long
13 opinions on anticipation, and then he sort of puts -- you can
14 see what he did. He added 230 right at the end as an
15 obviousness, and he doesn't really explain why. And even under
16 the -- even if you compare Shamos opinion page seven, for
17 example, claim one is anticipated by J-CON under Shamos opinion
18 re Dworkin, claim one is anticipated by Dworkin. He doesn't
19 talk about the combinations being obvious.

20 And the same thing, what he's doing is he's giving
21 the reasons why in this Exhibit G, on all these claims why they
22 are anticipated, but he's not saying why they are obvious, and
23 it's just kind of silly, and I don't know how you can be
24 allowed to do this kind of thing.

25 MS. STOLL-DeBELL: Your Honor, it says in the title